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Supreme Court of the United States

OCTOBER TERM, 1937

No. 87

WILLIAM D. FRAD, PETITIONER,

vs.

JOHN J. KELLY, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK, UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MAY 27, 1937.

CERTIORARI GRANTED JUNE 1, 1937.

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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT

JOHN J. KELLY, United States Marshal for the Southern District of New York,

Respondent-Appellant,

—against—

UNITED STATES OF AMERICA, *ex rel.*, WILLIAM FRAD,

Relator-Appellee.

Statement Under Rule 13, Subdivision 4

This is an appeal by the respondent John J. Kelly, United States Marshal for the Southern District of New York, from two orders dated January 26, 1937 sustaining a writ of habeas corpus, discharging the relator from custody and denying a motion to sentence the relator-appellee, William Frad.

On March 21, 1934 the case of United States versus William Frad, with aliases, was referred to the Honorable Robert A. Inch for trial on Indictments C 80-944, C 96-116 and C 96-120, charging a series of crimes involving the concealment of his identity over a period of years for the purpose of carrying on his activities as a card sharp on the high seas. After the case had been moved for trial the relator withdrew his plea of not guilty and entered a plea of guilty to the three indictments before Judge Inch and a jury.

On March 26, 1934 relator was sentenced on Indictment C 96-116 to two years imprisonment and to pay a fine of $1000 and on Indictment C 80-944

and C 96-120 the imposition of sentence was suspended and the relator placed on probation for a term of four years to begin after he had served the sentence on Indictment C 96-116,

On November 2, 1935 relator was discharged from the penitentiary and entered his term of probation, reporting weekly at the probation office for the Southern District of New York.

On December 13, 1935 notice was given to E. Fred Sweet, Chief Probation Officer for the Southern District of New York, "That on December 16, 1935, at 10:30 o'clock in the forenoon of that day, in the United States District Court for the Eastern District of New York, at the Federal Building, Brooklyn, New York, an application for the within order to discharge William Frad from probation and from further supervision and to terminate the proceedings against him in this case will be made to the Honorable Robert A. Inch, United States District Judge for the Eastern District of New York." On December 16, 1935 an order was entered by Judge Inch sitting in the Eastern District of New York revoking probation and terminating the proceedings against the relator.

On November 19, 1936, a complaint was filed against relator for larceny on the high seas, by W. J. McNulty, Special Agent in the Federal Bureau of Investigation. On November 20, 1936, an order was signed by Honorable Francis G. Caffey United States District Judge for the Southern District of New York, for the "issuance of a warrant to apprehend probationer * * * for violation of one of the terms of his probation" on which the relator was arrested and taken into custody by John J. Kelly, United States Marshal for the Southern District of New York.

Statement Under Rule 13, Subdivision 4

On December 3, 1936, relator was notified that Indictments C 96-120 and C 80-944 would be on the 7
calendar for sentence on December 8, 1936. A motion noticed on December 2, 1936 to resettle aforesaid order of Judge Inch dated December 16, 1935 was made returnable December 8, 1936. On the return date, no order was entered on the hearing for resettlement before Judge Inch and no hearing was held on the calendar motion to sentence; inasmuch as on December 4, 1936 a writ of habeas corpus had been allowed by Judge Caffey.

After allowance of writ, the Honorable William Bondy, United States District Judge for the Southern District of New York, released relator from 8
custody on $5,000 bail pending disposition of said writ of habeas corpus. On December 21, Judge Bondy heard the arguments on the writ and on December 28, he heard the arguments on the motion to sentence.

On January 27, 1937, two orders were filed by relator based on Judge Bondy's opinion of January 13, 1937. On January 28, 1937, two notices with grounds of appeal under Rule 3, Supreme Court Rules, were filed and for the purposes of this appeal are consolidated herein.

On January 29 and on January 30, 1937, two 9
petitions for appeal and orders allowing appeal were filed in the alternative and citation issued returnable February 27, 1937. The alternative appeal papers are not printed in this record.